June 20, 1995

COMMITTEE ON JUDICIARY AND OTHER ELECTED OFFICES

REPORT NO. 1: ARTICLE IV, JUDICIAL BRANCH

The Committee met on Monday, June 12, 1995, Wednesday, June 14, 1995, and Tuesday, June 20, 1995 to consider proposed amendments to Article IV, Judicial Branch. The Committee considered Delegate Proposals 111, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 135, 197, 205, 319, 320, 387, 395, 424, 438 which had been referred to it by the Committee on Organization and Procedures. In addition, the Committee considered the draft House Legislative Initiative submitted by the courts and the accompanying analysis, and House Legislative Initiative No. 9-11, passed by the House on December 2, 1994.

The Committee decided that current Article IV should be deleted in its entirety and a new Article IV should be substituted. Current Article IV does not provide constitutional status for the courts. The new Article IV proposed by the Committee recognizes that the judicial branch is co-equal with and independent of the executive and legislative branches. Establishment of the judiciary in the Constitution assures its independence. The constitutionally established courts cannot be abolished by legislation.

Each of the new sections is discussed below.

Section 1: This section establishes the Supreme Court and the Superior Court under the Constitution. All judicial power is vested in these courts.

Section 2: This section provides for the justices and jurisdiction of the Supreme Court. It establishes a Chief Justice and at least two Associate Justices. This section permits the Legislature to expand the number of Associate Justices should that become necessary. However, the number will not fall below two. The Supreme Court is given all of its current jurisdiction over appellate matters and the jurisdiction to issue any necessary writs and orders. These include writs of mandamus, certioriari, prohibition, and habeas corpus, together with any other writs or orders appropriate to the full exercise of the Court's jurisdiction. The jurisdiction with respect to writs and orders is original jurisdiction but not exclusive jurisdiction. The Superior Court also has original jurisdiction to use writs and orders appropriate to the full exercise of its powers.

The Chief Justice and Associate Justices are appointed for an initial term by the Governor and are confirmed by the Senate. The Committee considered the alternatives of confirmation by both houses of the Legislature and confirmation by a joint session of the Legislature proceeding by majority vote. These alternatives were rejected because the Committee concluded that the

Senate's equal representation of the interests of each of the senatorial districts would adequately protect the people from unqualified candidates. Subjecting candidates to approval of both houses would not provide any significantly better or increased protection and could delay appointments unnecessarily. The Committee noted that the House, in its proposed constitutional article, also endorsed confirmation by the Senate alone. The Committee also considered the alternative of confirmation by the Senate by super-majority of a 2/3 or 3/4 vote. The Committee rejected this alternative because it might delay appointments or subject appointments to additional political pressures. The more legislators who need to approve an appointment, the more political considerations may intrude.

Section 3: This section provides for the judges and jurisdiction of the Superior Court. It establishes a Presiding Judge and at least three Associate Judges. This section permits the Legislature to expand the number of Associate Judges should that become necessary. However, the number will not fall below three. The Superior Court is given all of its current jurisdiction over civil and criminal matters and, like the Supreme Court, is given the jurisdiction to issue any necessary writs and orders in aid of its jurisdiction.

The Presiding Judge and Associate Judges are appointed by the Governor and confirmed by the Senate. For the same reasons explained with respect to Section 2 above, the Committee rejected an alternative of confirmation by both houses of the Legislature.

Section 4: The Committee endorsed a new method of determining whether a justice or judge should continue to serve after the initial term. This new method is a non-competitive election in which the people determine whether the justice or judge should be retained for an additional term. If a majority of the votes are in the affirmative, then the justice or judge is retained. In the type of election specified by Section 4, the judge runs against his or her own record. The candidate does not run against another individual. The voters' choice is between retaining or discharging the justice or judge. This new method was proposed by the Courts and was endorsed by the House in Legislative Initiative 9-11 which passed the House in December 1994. This method has been used for many years in several states within the United States.

The Committee decided that allowing the people to determine whether a judge would be retained served important interests in the Commonwealth. In a democracy, the voters should have a say in the choice of all of the officials who make important decisions affecting the public welfare. Elections offer the chance to remove an incompetent judge. Elections also foster the independence of the judiciary because judges who are retained by the people are not obligated in any way to officials of the executive branch or the Legislature.

In moving from a system in which all decisions about judges are made by appointment to a system in which some decisions are made by elections, the Committee was mindful of the concerns that election of judges may not produce the best result for the community. Political skill is not necessarily indicative of judicial ability. Those who are successful in a political contest are not necessarily fit to serve in a judicial role. The best qualified candidates may not

seek judicial office if they are subjected to the strain of an election campaign. By providing for a non-partisan election in which judges may not engage in any campaign activities whatsoever, the Committee sought to avoid these risks involved in election of judges while retaining the benefits to the public.

Section 4 provides an initial term of office of 12 years for Supreme Court justices and an initial term of office of 6 years for Superior Court judges. The Committee found that stability is very important in the Supreme Court; continuity in the justices serves the interests of the community; and consistency in outlook and philosophy is desirable. The longer initial term should provide better decisions overall because of the nature of the essential task of the Supreme Court. The Committee found that subjecting Superior Court judges to a decision on retention after 6 years also served important interests. Six years is sufficient time for a judge to establish himself or herself in the position and to handle a case load large enough to provide a balanced view of the judge's capabilities. The current Constitutional provision, in effect since 1976, provides for a 6-year term of office.

Section 4 provides for terms of 12 years for both justices and judges after the initial term. The Committee found that both courts would benefit from the stability and continuity of a term of this length after the approval of the voters had been given. The current constitutional provision, in effect since 1976, allows the Legislature to increase the term of office from 6 years to 12 years after the initial term. The Committee considered whether the retirement benefits of judges would be affected by the combination of an initial 6-year term and a subsequent 12-year term, and decided to leave this matter to the Legislature to regulate through its legislation on the retirement system.

The Committee noted the recommendations of the Committee on Legislative Branch and Public Finance to the effect that the term of office for members of the House of Representatives be four years instead of two years. If adopted by the Convention, that provision would mean the general elections might be at four-year intervals. Elections at four-year intervals rather than the present two-year intervals might mean the Committee would need to make adjustments for the judges who serve 6-year terms. The Committee recommends that the Convention approve its plan as currently stated, with the understanding that these provisions would be harmonized with the provisions affecting general elections after further discussion by the Committee and would be brought back to the floor if necessary.

Section 5: Section 5 provides for the qualifications of office. Section 5 retains the age requirement of 35 years currently in the Constitution. This age requirement is desirable to help assure that candidates have the wisdom and experience to contribute to an effective judiciary.

Section 5 requires that justices and judges be U.S. citizens. Under the current Constitution, U.S. nationals are also eligible. The Committee concluded that the important role of judges in the community justifies this change in qualifications.

The Committee added a residency requirement of 5 years. The Committee recognized that this requirement is quite long, but concluded that it balances the need of the community to have judges who are familiar with and sensitive to local customs and traditions with the interest in maintaining a large pool of qualified candidates. The Committee's proposed language does not impose the residency requirement immediately before appointment. Someone who resided in the Commonwealth, but left to go to school or to work in a position off-island, would be eligible for appointment under this provision so long as that person had resided in the Commonwealth for a total of five years and thus had the necessary local knowledge and background that is the basic qualification for office. Residence in the Commonwealth is currently defined by statute and, under this provision, would continue to be governed by statute.

The Committee added a requirement that judges be members of the Commonwealth bar. This helps ensure a familiarity with the law and rules peculiar to the Commonwealth, and provides additional standards that are helpful in qualifying able judges to make wise decisions.

Upon ratification of this amendment, the statutes governing matters reserved for court rules are no longer in effect. The Committee noted that, under the current statute, government employees who are lawyers are permitted to practice without qualifying for the Commonwealth bar by examination (or as other lawyers coming from distant jurisdictions are required to qualify) and that such lawyers continue to be exempt from these requirements after they enter private practice. The Committee urges the Supreme Court to reconsider this practice (1 CMC 3603) and to impose by rule the same requirements on all lawyers in private practice who have qualified in other jurisdictions.

Section 6: This provision with respect to salary is the same as the current Constitution. The Committee found no need to change this provision.

Section 7: This provision with respect to sanctions is the same as the current Constitution with one exception. There has been a problem in the past because the legislature has allowed appointments to the advisory commission to lapse. The advisory commission has the responsibility of dealing with complaints against judges, so the Chief Justice in recent years has not had any body to which these complaints could be sent. The Committee decided to remedy this problem by providing that, in the event that vacancies on the commission remain for more than 90 days, the Chief Justice may make temporary appointments. If the Chief Justice makes appointments under this provision, those members would serve until the Legislature acts or until they are removed by a subsequent action of the Chief Justice.

Section 8: This provision with respect to limitations on the activities of justices and judges is the same as the current Constitution with one exception. The Committee recommends that a judge who becomes a candidate for political office must declare his or her candidacy at least six months before the election, and must resign upon such declaration of candidacy. The Committee noted that some elected positions, such as governor, require the candidates to declare a year or more before the election. With respect to other offices, a candidate might wait until the

statutory limit of 45 days before the election to declare candidacy. For that reason, the Committee decided it would serve the public interest to require judges to declare early enough that there can be no suggestion of conflicts of interest. For that reason, it decided not to rely solely on the occasion of the declaration of candidacy, but imposed the six month limitation. A judge who becomes a candidate may declare earlier than six months before the election and be required to resign at that point. But a judge may wait no longer than six months before election to declare candidacy. Thus the public would have the protection of a substantial period of time separating the end of judicial duties and the election.

The Courts recommended that the provision in the current Constitution that a justice or judge who wants to become a political candidate must resign at least six months "before becoming a candidate" should be changed to six months "before the next election". The Courts suggested that under the current provision, if a judge plans to become a candidate six months before an election then, in practice, the judge has to resign a year before the election; and that nothing is served by requiring such a long period of time. In addition, it may place a great financial burden on a prospective candidate. The House of Representatives also recommended this change. The Committee decided that the six month requirement, standing alone, was not sufficient. If a justice or judge became a candidate for governor, under the rule proposed by the Courts, the candidate could continue to sit on the court until six months before the election.

The Committee understands that the recusal rules protect the public from conflicts of interest if a declared political candidate remains on the bench because lawyers representing the parties in a dispute may challenge the judge's impartiality and request the judge to recuse himself or herself from the case.. The Committee also understands that the other protections in this constitutional provision limiting financial contributions to political organizations and participating in political campaigns were designed to deter announced candidates from remaining on the bench. However, it believes that the public perception of the courts as neutral and impartial bodies removed from politics is so important to the community that there should be extra protection added to this section. No announced candidate should remain on the bench. And all candidates who are judges should be required to announce at least six months prior to the election.

This provision does not affect the election at which the question of retaining the justice or judge is put on the ballot. That is not included in the phrase "candidate for public office" as used in the provision because the justices and judges may not campaign or align themselves with any political party, and there is no contest between two or more persons for the office.

The Committee recognizes that justices and judges in the Commonwealth are governed by codes of ethics and rules for judicial conduct. This provision does not supplant any of those codes or rules. It states the minimum protections needed to ensure the impartiality and proper conduct of the judiciary in the Commonwealth.

Section 9: This provision expands on Section 8 in the current Constitution. It updates the Constitution by providing for rule-making power vested in the Supreme Court. At the time the 1976 Constitution was written, the Supreme Court was not in existence.

This provision makes the Chief Justice the administrative head of the judiciary. It is the Chief Justice's responsibility to make sure that the courts are run efficiently. The Committee found that the judiciary needs an established head just like an executive department or a legislative house needs to have an established head..

The Chief Justice is responsible for making an annual report to the people. This is a new requirement. The Committee believes that this requirement is a necessary adjunct of its decision to provide for elections in the judicial system. The public needs to be informed about the courts in order to make good decisions at the polls. It is the Committee's intention that the Chief Justice make an oral report in person and that a written version of the report also be issued. The Committee discussed whether the annual report of the Chief Justice should be coordinated with the annual report of the Governor and the annual report of the Washington Representative. Rather than specify any particular order in which these reports should be presented to the public, the Committee has left this to the discretion of the Chief Justice to select the time of year most effective for educating the public about the work of the judicial branch. The Committee has specified, however, that the report shall be delivered to a joint session of the Legislature. The Committee believes that it is important to draw the attention of the legislators to any problems the judicial branch may wish to raise and to provide an occasion on which the press and other interested persons can listen to the Chief Justice present the report in person.

The Chief Justice is also responsible for the annual judicial branch budget. The Committee considered the option presented by the Courts in their legislative initiative of having the budget presented directly to the Legislature. The advantage of this approach would be to prevent the Governor from cutting the judicial branch budget in order to allocate funds to the executive branch, and to preserve the independence of the judicial branch. The disadvantage of this approach is the potentially adverse effect on the Governor's efforts to put together a balanced budget if the judicial branch budget is not included. The Committee also considered the option of having the budget presented to the Governor with the limitation that the Governor could not change what the Chief Justice had submitted, but must transmit it directly to the Legislature. The advantage of this approach is that the Governor would be informed directly of the judicial branch budget and could take that into account in putting together a balanced budget for the Commonwealth. The disadvantage is that the Governor would be unable to balance the needs of the judicial branch with the needs of the people in other respects and to establish priorities in putting together an overall budget for the Commonwealth. The Committee decided that the budget should be presented to the Governor, without limitation, for the purpose of putting together a balanced budget for the Commonwealth. If the Governor fails to transmit the judicial branch budget to the Legislature in the form in which it was submitted by the Chief Justice, the Chief Justice may elect to make a presentation directly to the Legislature during its budget hearings, stating the position of the judicial branch on its original budget requests. The judicial

branch is not bound by the decisions on its budget made by the Governor. The Legislature will give a fair hearing to both the Chief Justice and the Governor in making its final authorization and appropriation decisions. For this reason, the Committee does not believe that the balance of power between the independent branches is affected in any way by having the Chief Justice submit the judicial branch budget to the Governor.

The Supreme Court is given rule-making authority over all aspects of the administration of the judiciary. Both the proposal advanced by the Courts and the legislative initiative endorsed by the House adopted this approach. Neither the Courts nor the House proposed to continue the current practice by which rules issued by the Supreme Court become effective only if the Legislature takes no action for 60 days after the rules are submitted. This section does not continue that practice. The rules issued by the Supreme Court are effective when published, and no review by the Legislature is necessary. The Committee expects that, as a matter of course, the Supreme Court will provide an opportunity for comment by the bar and other interested parties prior to the issuance of new rules. This would provide adequate public input now arguably provided by the legislative review period.

The Committee gave attention to the specifics to be addressed by the Supreme Court in this manner. Of particular importance, the Supreme Court must provide in its rules for the assignment of judges to Rota and Tinian for the effective delivery of judicial services to the people of those islands.

The Committee believes that a number of the suggestions contained in the proposals of the Legislature are not of constitutional nature and should be addressed in the rules applicable to the courts. These include the establishment of special sections or divisions for particular subject matter areas such as land questions, labor matters, small claims, and family disputes; the use of judges from other courts and jurisdictions to accommodate shortages or conflicts of interest that may occur in particular cases; the use of retired justices and judges; and the details of the budget process.

Because all judicial power is vested in the Supreme Court and the Superior Court (Section 1), if other courts are to be created in the future, such as municipal courts or traffic courts, they would be created as divisions or sections of the Superior Court, and they would be created by court rule. The balance of power among the branches of government would be preserved, however, because the Legislature would be required to approve any additional judicial positions.

The Committee decided not to provide for special judges, now permitted by statute, who are lawyers and businessmen in the Commonwealth and elsewhere appointed by the Governor and confirmed by the Senate. Rather, the Chief Justice (or the Presiding Judge by delegation from the Chief Justice) would appoint to sit with the CNMI courts active full-time judges or retired full-time judges from Guam, the United States federal or state courts, the Federated States of Micronesia, Puerto Rico, the Virgin Islands, Samoa, and any other jurisdiction that qualfies as

a commonwealth, territory, or freely associated state of the United States. The Committee believes that a wide range of potentially qualified judges should be included in the Constitution. Even though some of these jurisdictions do not now send judges to the Commonwealth, there may be qualified judges from these courts in the future that the Chief Justice will want to use. The Committee finds that the extensive power of the Chief Justice to use active and retired judges from other courts, and to have justices of the Supreme Court sit with the trial court or have judges of the Superior Court sit with the Supreme Court provides sufficient flexibility to meet the Commonwealth's needs. The Committee also found that the Chief Justice is in the best position to assure that qualified judges are used to meet these temporary needs. The Committee believes that impartial full-time judges and retired full-time judges are preferable to part-time judges who are lawyers in private practice or in business in the Commonwealth or elsewhere. Upon approval of the amended Article IV, the use of the existing special judges will cease.

The Committee decided not to allow the Legislature to create additional courts. The Committee found that this power to organize the judiciary should be left with the judiciary as an independent branch of government. The courts have the power to establish special branches, divisions, or sections to accommodate special areas where expert capability or continuity would be in the public interest.

Section 10: The Committee added a new provision with respect to succession when there is a vacancy in the office of Chief Justice or Presiding Judge. The Committee recognized that it serves the public interest to have candidates chosen for those positions who have the extra administrative and leadership capabilities needed to enable the judiciary to operate effectively. The Committee was also mindful, however, of the public interest in prompt filling of vacancies. To balance these interests, the Committee provided an alternative if the Governor does not act promptly or the Legislature delays its approval. When a vacancy occurs, the next senior justice or judge on that court becomes Acting Chief Justice or Acting Presiding Judge. The next senior judge is determined by length of service on the bench, not by age. The length of service on the bench is measured by service on the particular court, not by total service as a judge.

If a successor is not confirmed within 90 days, this succession becomes permanent. If the Governor appoints the next senior justice or judge, then the appointment will become final in any event because, if the Legislature does not act to confirm, the operation of Section 10 will reach the same result. The Committee believes this is appropriate. If the Governor has confidence in the next most senior justice or judge, then this is likely to be the best candidate.

When a vacancy occurs and the Governor makes an appointment, the Committee intends that the justice or judge filling the vacancy serve a full term. Thus, the remaining amount of time in the term of the justice or judge who vacated the office would be irrelevant. This is necessary because of the election system that the Committee has recommended. Every justice or judge should have the full term provided in the Constitution to win the approval of the people so that he or she will be retained when the question is put on the ballot.

If a vacancy occurs in the position of Associate Justice or Associate Judge, the Chief Justice can use the appointment powers under the rule-making authority to provide a temporary replacement or replacements from among the active full-time judges from other jurisdictions or from among the retired former full-time judges from the Commonwealth or other jurisdictions until the Governor makes a new appointment.

Section 11: This provision is new. It requires elected and appointed officials in the Commonwealth who have disputes with other elected or appointed officials, perhaps in another branch or level of government, to submit those disputes to the Supreme Court in the first instance for an advisory opinion. Because this is a new remedy, the Committee expects that the Supreme Court would use its rule-making authority to define how this remedy would be used.

The Committee considered options of having this new remedy cover only elected officials, so that the disputes sent to the Supreme Court would be the larger issues about powers and duties delineated by the Constitution, or having this remedy cover elected and appointed officials. The Committee decided to cover elected officials and officials who are appointed by the Governor. This would reach all the autonomous agencies and the executive branch departments. Any lower official who had a dispute with another lower official would have to channel the dispute through appointed head of the department or agency in order to use the advisory opinion remedy. This will assure that only important disputes are sent to the Supreme Court.

The Committee decided to limit the disputes that may be submitted to the Supreme Court for an advisory opinion to those about the exercise of powers, duties, or responsibilities under the Constitution or any statute. This provision is not intended to reach any dispute that may arise between officials. It is limited to the most important disputes about powers, duties, and responsibilities that, in the experience of the Commonwealth thus far, have caused the most difficulties and delays in the operation of the Commonwealth government. The Committee intends that these disputes about powers, duties, and responsibilities be resolved promptly and finally, so that the government can function efficiently.

Officials covered by this section are not required to submit their disputes to the Supreme Court. They may resolve them informally as they have in the past. They may not, however, go to the courts and sue one another in the usual fashion. They must go first to the Supreme Court. Only if the Supreme Court finds that litigation in the usual fashion would be preferable, and issues a decision to that effect, may the parties sue one another in the courts.

The Committee discussed whether the provision should be phrased so that the Supreme Court "may issue" or "shall issue" an advisory opinion. Under the "may issue" option, the Supreme Court would not be required to act. This would give the Court the maximum flexibility to shape this new remedy. Under the "shall issue" option, the Court would be required to act, although the provision states that the opinion may deal with the issue "in part or whole" which

permits the Court some flexibility.

The Committee provided that the decision of the Supreme Court is final and binding. This means that the elected and appointed officials involved in the dispute may not re-litigate the matter in any other court. It also means that if some other person litigates the same issue, the decision of the Supreme Court would govern. Once the dispute is presented to the Supreme Court, until the Supreme Court acts, the officials may not bring any lawsuit in any court. If the Supreme Court decides to issue an advisory opinion, that opinion is binding. If the Supreme Court decides not to act and expressly permits a further litigation remedy, then the elected official is free to pursue other remedies in the courts if they are available.

This provision is necessary to resolve government disputes quickly and finally, so the government can act more efficiently. The Committee finds that disputes between mayors and governors, between governors and the legislature, and between majorities and minorities in the legislature are depleting the energy and financial resources of the government and adversely affecting the public. It is not in the public interest to have these disputes litigated through the long and procedurally complicated processes normally applied in the trial courts.

The Committee recognizes that even though the resolution of these disputes within the Commonwealth has been placed with the Commonwealth's highest court, in unusual circumstances there may be a question arise under the federal constitution that would permit an appeal to the Ninth Circuit Court of Appeals. It is the Committee's intention that the order of the Supreme Court would have the status and finality that would permit an immediate appeal should one of the parties elect to do so.

This provision does not apply to contested elections. The provisions of Article II, Section 14(a) are applicable to those disputes.

This provision does not apply to actions brought by office holders in their individual capacities. It applies only to office holders in their official capacities.

This provision does not apply to taxpayer actions. The provisions of Article X, Section 9 are applicable to those disputes.

The Committee places with the Supreme Court the responsibility to promulgate rules detailing how this advisory opinion provision is to be used. This flexibility is necessary with a new process. The Committee recognized that the Supreme Court might determine from its review of the dispute sent to it for an advisory opinion that there was not an adequate record on which it could act. In those instances, the Supreme Court could send the matter to the trial court either through the normal litigation process or through an expedited process. Most issues about the powers, duties, and responsibilities of public officials are matters of constitutional or statutory interpretation which the Supreme Court can accomplish without an extensive factual record. There may be cases where a factual record is necessary to a fair determination of the

issues and, in those cases, the Committee intended that the Supreme Court have the flexibility to rely on the trial courts. The Committee expects that the Supreme Court will give prompt attention and priority to resolving these disputes.

Schedule on Transitional Matters

The Committee has provided language to be inserted in the Schedule on Transitional Matters that is a separate document at the end of the Constitution. This provision ensures that the new Article IV is not interpreted to terminate or invalidate existing policies, employment, or any other matters over which the judiciary currently has constitutional or statutory authority. Under this provision, the existing judiciary, justices and judges, shall continue in existence and operation as if established pursuant to the new Article IV. However, if Article IV is ratified, any statute, regulation, or rule inconsistent with the new Article IV would be no longer in effect.

The current justices and judges will continue to serve out their terms. At the general election closest to the end of their term, the question whether to retain the current justices and judges will be put on the ballot.

The constitutional language reflecting the Committee's decisions is attached. The Committee recommends this language to the Convention.

Respectfully submitted.

Delegate HENRY U. HOFSCHNEIDER, Chair

Delegate DONALD B. MENDIOLA, Vice Chair

Delegate ESTHER S. FLEMING

Delegate JAMES M. MENDIOLA

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Delegate MARIANO T. AITANO

6/15/95

ARTICLE IV: JUDICIAL BRANCH

Section 1: Judicial Power

The judicial power of the Commonwealth shall be vested in a supreme court and a superior court.

Section 2: Supreme Court

The supreme court shall consist of a chief justice and at least two associate justices appointed by the governor and confirmed by the senate. The supreme court shall have appellate jurisdiction over final judgments and orders of the superior court and original jurisdiction to issue all writs and orders appropriate to the full exercise of its powers.

Section 3: Superior Court

The superior court shall consist of a presiding judge and at least three associate judges appointed by the governor and confirmed by the senate. The superior court shall have original jurisdiction over all criminal and civil actions in law and in equity and original jurisdiction to issue all writs and orders appropriate to the full exercise of its powers.

Section 4: Term of Office

The supreme court justices shall have an initial term of 12 years. The superior court judges shall have an initial term of 6 years. At the general election immediately before the end of the initial term, the question whether to retain shall be placed on the ballot. The justice or judge shall be retained if a majority of the votes cast are in the affirmative. The terms following the initial term shall be 12 years.

Section 5: Qualifications

A justice or judge shall be at least 35 years of age, be a citizen of the United States, have resided in the Commonwealth for at least 5 years before appointment, and be a member of the Commonwealth bar.

Section 6: Compensation

The compensation of justices and judges shall be as provided by law and may not be decreased during a term of office.

Section 7: Sanctions

A justice or judge is subject to impeachment as provided in article II, section 8, of this Constitution for treason, commission of a felony, corruption or neglect of duty. The legislature shall establish an advisory commission on the judiciary whose members include lawyers and representatives of the public. In the event that vacancies on the commission remain for more than 90 days, the Chief Justice may make temporary appointments to continue until the legislature acts. Upon recommendation of the advisory commission, the governor may remove, suspend or otherwise sanction a justice or judge for illegal or improper conduct.

Section 8: Limitations on Activities

A justice or judge may not hold another compensated government position, engage in the practice of law, make a direct or indirect financial contribution to a political organization or candidate, hold an executive office in a political organization, or participate in a political campaign. A justice or judge who becomes a candidate for elective public office must declare candidacy at least six months before the election and must resign judicial office upon such declaration.

Section 9: Administrative

The chief justice shall be the administrative head of the judicial branch.

(a) The chief justice shall make an annual report to the people in person through a joint session of the legislature.

(b) The chief justice shall submit an annual budget for the judicial branch to the Governor.

(c) The supreme court has administrative and policy authority with respect to the judiciary, and shall promulgate rules of the courts with respect to appellate procedure, civil and criminal procedure, assignment of judges to Rota and Tinian for effective judicial service for the people of those islands, attorney admission and discipline, governance of the bar, court fees, judicial and professional ethics, duties and responsibilities of the presiding judge and court officials, establishment of special sections or divisions for particular subject matters, and all other matters pertaining to administration of the judicial branch.

(d) The chief justice may designate, as the need arises, an active or retired full-time justice or judge from the Commonwealth, or an active or retired full-time justice or judge from any United States federal, state, commonwealth, freely associated state, or territorial

court, to hear particular cases in either the supreme court or superior court.

Section 10: Succession

When a vacancy occurs in the office of chief justice, the associate justice most senior in commission shall become acting chief justice. When a vacancy occurs in the office of presiding judge, the associate judge most senior in commission shall become acting presiding judge. If a successor is not appointed by the governor and confirmed by the senate within 90 days of the vacancy, the acting chief justice or the acting presiding judge shall succeed to the office.

Section 11: Advisory opinions

An official in the Commonwealth who is elected or appointed by the Governor and who has a dispute with another elected or appointed official about the exercise of powers or responsibilities under this Constitution or any statute shall apply to the Supreme Court for an advisory opinion before seeking any other remedy at law or in equity. The Supreme Court shall issue an advisory opinion in response to an authorized application which shall resolve the dispute submitted, in part or whole. An advisory opinion issued under this section is a final and binding decision when issued.

Separate provision for the Schedule on Transitional Matters

Section ___: Continuity of Judicial Matters

Upon the effective date of Article IV, as amended, the existing Supreme Court, its justices and employees; the existing Superior Court, its judges and employees; all existing administrative policies of the judicial branch; all existing rules of the courts; all cases pending in either court; all laws, regulations, and rules affecting the judiciary shall continue to exist and operate as if established pursuant to this Article IV, and shall, unless clearly inconsistent, be read to be consistent with this Article IV. The Supreme Court may exercise its rule-making authority in any area granted by this Article IV now occupied by statute. When the Supreme Court acts within its rule-making authority, any statute covering the same subject matter is no longer in effect.